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Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GOR GEVORKYAN on behalf of himself and all others similarly situated,

Case No.

CLASS ACTION

COMPLAINT

1. Violation of the Unfair Prong of the Unfair Competition Law
2. Unjust Enrichment
3. Conversion

JURY TRIAL DEMANDED

Defendants.

1 Plaintiff Gor Gevorkyan and all others similarly situated (“Plaintiff”) allege
2 the following:

3 **NATURE OF ACTION**

4 1. This is a prospective class action against Bitmain, Inc. and its parent
5 company Bitmain Technologies, Ltd. (collectively “Bitmain” or “Defendant”) in
6 connection with the marketing and sale of its crypto currency mining devices known
7 as Application Specific Integrated Circuits (“ASIC devices” and the “Products”). As
8 alleged herein, until the complicated and time-consuming initialization procedures
9 are completed, Bitmain’s ASIC devices are preconfigured to use its customers’
10 electricity to generate crypto currency for the benefit of Bitmain rather than its
11 customers.

12 2. In the past, Bitmain ASIC devices could be configured and initialized in
13 low-power mode that did not mine crypto currency for Bitmain. However, after
14 Bitmain established itself as one of the world’s largest crypto currency miners in the
15 last several years, Defendant redesigned its ASIC devices to mine crypto currency
16 for the benefit of itself rather than its customers who purchase the Products.
17 Conveniently, Bitmain cashes in on every second it takes to get the ASIC configured
18 with the customers’ specifications and lays the substantial costs of operating the
19 ASIC devices at the feet of its customers.

20 3. Defendant has engaged in an unfair business practice, has been unjustly
21 enriched and has converted the use of its customers’ ASIC devices and electricity.

22 4. As a result of Defendant’s scheme, Plaintiff and the class members were
23 injured in fact and suffered ascertainable and out-of-pocket losses.

24 **THE PARTIES**

25 5. Plaintiff Gor Gevorkyan is a resident of Los Angeles County,
26 California. He purchased Bitmain ASIC devices, including the AntMiner S9 for the

1 purpose of mining crypto currency for his personal financial benefit in approximately
2 January 2018. The Product was difficult to configure. It took him a substantial
3 amount of time to properly configure the ASIC devices. During this time, the ASIC
4 devices were pre-configured to mine and deliver crypto currency to Defendant. Also
5 during this time, the ASIC devices operated at full power mode, consuming a
6 substantial amount of electricity at Plaintiffs' expense. The ASIC devices were
7 mining crypto currency from the moment Plaintiff started the device and it would
8 transfer any electronic crypto currency mined to Defendant. This continued until the
9 ASIC devices were associated with Plaintiff's personal crypto currency account.

10 6. Defendant Bitmain, Inc. is a Delaware corporation with its principal
11 place of business at 251 High Street, Suite B, Palo Alto, California 94301.

12 7. Defendant Bitmain Technologies, Ltd. is a Chinese corporation with its
13 principal place of business in Beijing, China.

14 JURISDICTION AND VENUE

15 8. The Court has jurisdiction over this action pursuant to 28 U.S.C. §
16 1332(d) because there are more than 100 Class Members and the aggregate amount
17 in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs.

18 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
19 Defendant Bitmain, Inc. maintains its principal place of business in Santa Clara
20 County.

21 FACTUAL ALLEGATIONS

22 A. Crypto Currency

23 10. Crypto currency is a form of digital currency using cryptography to
24 secure electronic transactions and to control the creation of new virtual currency
25 units. Popular forms of crypto currency include Bitcoin, Bitcoin Cash, Peercoin and
26 Unobtanium.

1 11. Bitcoin is by far the most popular form of crypto currency created as a
2 new worldwide payment system in 2009. In the last several years, Bitcoin has
3 become a preferred currency for many consumers and is accepted as a form of
4 payment by many online retailers and service providers.

5 12. Though crypto currency is a form of “virtual currency,” the value of a
6 crypto currency is very real. Bitcoin for example trades in currency markets at a rate
7 of 1 Bitcoin to approximately \$6,345.16 (last updated November 13, 2018).

8 13. The market for crypto currencies is known to be extremely volatile and
9 subject to manipulation by large players in the market. For example, Defendant has
10 admitted to engaging in a practice of destroying or “burning” virtual currency for the
11 purpose of reducing the supply of the currency and raising its value. *See*
12 <https://www.ccn.com/bitmain-will-burn-12-of-bitcoin-cash-tx-fees-calls-on-other-miners-to-follow-suit/> (“By reducing the total supply of Bitcoin Cash in circulation,
13 Bitmain believes that it can reduce sell pressure on the coin, ultimately making it
14 more valuable.”).

16 14. New crypto currency is created as a reward for a process known as
17 mining. People compete to “mine” virtual currencies using computing power to solve
18 complex math puzzle. These solutions are then used to encrypt and secure the crypto
19 currency. The computers or pools of computers which are the first to solve these
20 puzzles are rewarded with new crypto currency.

21 15. Once earned, virtual currency is stored in a digital wallet associated
22 with the computing device that solved the puzzle.

23 16. Virtual currency mining is a passive process. These math puzzles are
24 solved by computers using computer power. They do not require any calculations by
25 the person mining the currency. As competition to create more virtual currency has
26 increased, the mathematical puzzles have become more complex, making virtual
27 currency more difficult to obtain. Computers that were once capable of efficiently
28 mining Bitcoin could now take centuries to obtain the same results.

1 17. A mining pool is the pooling of resources by virtual currency miners,
2 who share their processing power over a network, to split the reward equally,
3 according to the amount of work they contributed to the probability of solving the
4 puzzles. Mining in pools developed in response to the massive increase in difficulty
5 of virtual currency mining.

6 18. As interest in virtual currency mining has increased in recent years, so
7 did the technology used to mine the currency. Initially, virtual currency was
8 primarily mined by personal computers without any additional hardware. Later,
9 video graphics cards were found to solve these math puzzles more quickly. Finally,
10 dedicated mining devices called ASICs became the standard device for virtual
11 mining.

12 19. ASIC devices can perform billions of calculations per second to try and
13 crack the cryptographic puzzle that yields new Bitcoins.

14 20. ASIC devices consume so much electricity that their value to the
15 customer is dependent in large part on the customer's local electricity costs. Indeed,
16 it may take months or years to earn back the cost of purchasing and operating an
17 ASIC device in virtual currency depending on the users' local electrical costs.

18 21. As competition and the technology to mine virtual currency improves,
19 the costing of minting new virtual currency increases tremendously. It has been
20 reported that the cost to mine virtual currency increased tenfold between 2016 and
21 2017 alone.

22 **B. Bitmain ASIC Devices**

23 22. Founded in 2013, Bitmain markets and sells ASIC devices
24 internationally. Far and away, Bitmain dominates the ASIC device industry.

25 23. Bitmain is also the largest single miner of virtual currency in the world.
26 Bitmain operates Antpool, the largest Bitcoin mining pool in the world. Defendant is
27 also the largest competitor to each of its ASIC device customers because it maintains
28 its own virtual currency mining accounts.

1 24. Bitmain operates virtual currency mining “farms” in locations where
 2 electricity costs are extremely low, including Russia and Inner Mongolia. Bitmain
 3 operates more than 100,000 ASIC devices on these farms.



14 *Photo of Bitmain Inner Mongolia Virtual Currency Farm.
 15 Reportedly operating 25,000 ASIC devices mining Bitcoin and
 other virtual currencies around the clock every day.*

16 25.

17 26. Analysts estimate that Bitmain made \$3 - \$4 billion in operating profits
 18 in 2017.

19 27. Defendant markets and sells a number of ASIC devices that work using
 20 the same or similar interface and setup procedures.

21 At any given time, the devices range in price based
 22 on the speed with which they can perform
 23 calculations. Moreover, because the value of an
 24 ASIC device is so closely linked to its ability to
 25 generate virtual currency through sheer processing
 26 power, Bitmain varies the price of its ASIC
 27 devices based on the current trading price of Bitcoin, a leading form of crypto
 28 currency.



*Bitmain Bitcoin Mining Device
 AntMiner S9*

1 28. Compared to other computer components, ASIC devices consume an
2 enormous amount of energy when operating at full speed. For example, the
3 AntMiner S9 pictured above is rated at 1375 watts of power, while a standard light
4 bulb is rated at only 60 to 100 watts. Because of these extremely high operating
5 costs, it is necessary to consider operating costs and local electricity prices in
6 determining the value of an ASIC device.

7 29. Bitmain ASIC devices can often take an extremely long time to initiate.
8 The initialization process can take many hours and up to several days to complete.

9 30. Defendant uses its customers' ASIC devices and customers' electrical
10 power sources to enrich itself at the expenses of its customers.

11 31. Until approximately two years ago, Bitmain ASIC devices started in
12 low power mode, while the customer linked the device to her virtual currency
13 account. Only after the setup process was complete, would the devices fully power
14 up and channel incoming virtual currency to the owner's virtual currency account.
15 While the customer was initiating the setup procedures, the ASIC devices were not
16 mining virtual currency for anyone and were not consuming large amounts of
17 electricity. There was no default account setting to which virtual currency mined
18 during the setup process was directed and transferred.

19 32. Recently, Bitmain modified the startup procedure for its ASIC devices
20 such that the devices immediately start in full power high energy consumption mode
21 before the customers' account is linked to the device and stay in that mode until the
22 setup process is complete. Moreover, the default account setting on the Bitmain
23 ASIC devices is set to contribute to Bitmain's own account on its own Antpool
24 server. As a result of this new practice, Bitmain ASIC devices cost more to operate
25 during the setup phase and transfer virtual currency to Defendant rather than the
26 customers.

27
28

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all persons in the United States who, within the relevant statute of limitations period, purchased Bitmain ASIC devices.

34. Plaintiff also seeks to represent a subclass defined as all members of the Class who purchased Bitmain ASIC devices in California (“the California Subclass”).

35. The Class is so numerous that joinder of all members is impractical. On information and belief, the Class includes more than one hundred thousand members.

36. The Class is ascertainable because the Class Members can be identified by objective criteria – the purchase of Bitmain ASIC mining devices during the Class Period. Individual notice can be provided to Class Members “who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

37. There are numerous questions of law and fact common to the Class which predominate over individual actions or issues, including but not limited to:

- (a) Whether Defendant engaged in an unfair business practice;
- (b) Whether Defendant was unjustly enriched by its conduct;
- (c) Whether Defendant converted the use of ASIC devices to its own ends;
- (d) Whether Class Members suffered an ascertainable loss as a result of Defendant's misrepresentations; and
- (e) Whether, as a result of Defendant's misconduct as alleged herein, Plaintiff and the Class Members are entitled to restitution, injunctive, monetary relief and/or costs and attorneys' fees, and if so, the amount and nature of such relief.

38. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct. Plaintiff has no interests antagonistic to the interests of the other members of the

1 Class. Plaintiff and all members of the Class have sustained economic injury arising
2 out of Defendant's violations of common and statutory law as alleged herein.

3 39. Plaintiff is an adequate representative of the Class because his interests
4 do not conflict with the interests of the Class Members he seeks to represent, he has
5 retained counsel competent and experienced in prosecuting class actions, and he
6 intends to prosecute this action vigorously. The interests of the Class Members will
7 be fairly and adequately protected by Plaintiff and his counsel.

8 40. The class mechanism is superior to other available means for the fair
9 and efficient adjudication of the claims of Plaintiff and the Class Members.

10
11 **First Cause of Action**

12 **Violation of the "Unfair Prong" of the Unfair Competition Law**
13 **By California Class Against All Defendants**

14 41. Plaintiff repeats the allegations contained in the paragraphs above as if
15 fully set forth herein.

16 42. Plaintiff brings this Count on behalf of the California Subclass.

17 43. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent
18 part: "Unfair competition shall mean and include unlawful, unfair or fraudulent
19 business practices and unfair, deceptive, untrue or misleading advertising"

20 44. Defendant violated the "unfair" prong of the UCL in that their conduct
21 is substantially injurious to customers, offends public policy, and is immoral,
22 unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any
23 alleged benefits. Defendant's conduct is unfair in that the harm to Plaintiff and the
24 Class arising from Defendant's conduct outweighs the utility, if any, of those
25 practices.

26 45. Defendant's practices as described herein are of no benefit to consumers
27 who are tricked into mining virtual currency for the benefit of Bitmain instead of
28 themselves.

1 46. As a direct and proximate result of these acts, Bitmain's customers have
2 been and are being harmed. Plaintiff and members of the Class have suffered injury
3 and actual out-of-pocket losses as a result of Defendant's UCL "unfair prong"
4 violation because Bitmain used its customers' ASIC devices and required them to
5 incur operating expenses while mining virtual currency not for their own benefit, but
6 for the benefit of Bitmain.

7 47. Pursuant to Bus. & Prof. Code §17203, Plaintiff, and the California
8 Class are therefore entitled to: (a) an order requiring Defendant to cease the acts of
9 unfair competition alleged herein; (b) full restitution of all expenses incurred as a
10 result of Bitmain’s unfair and deceptive practices; (c) interest at the highest rate
11 allowable by law; and (d) the payment of Plaintiff’s attorneys’ fees and costs
12 pursuant to, *inter alia*, California Code of Civil Procedure §1021.5.

Second Cause of Action

Unjust Enrichment

Against All Defendants

17 || 48. Plaintiff repeats and realleges the foregoing paragraphs.

18 49. Plaintiff brings this claim on behalf of the class against all Defendants.
19 Defendant has been unjustly enrichment by the conduct described above.

20 50. Unjust enrichment requires the receipt of a benefit and unjust retention
21 of the benefit at the expense of another.

22 51. Defendant received the benefit of class members computer power while
23 the operating expenses, including electricity fell on Class members rather than
24 Defendant.

25 52. Defendant should be required to disgorge all monies, profits and gains
26 which it has obtained and will unjustly obtain at the expense of Plaintiff and the
27 Class and reimburse Plaintiff and the class for the operating expenses of their ASIC

1 devices during the time in which Defendant received benefits from Class members'
2 ASIC devices.

3 **Third Cause of Action**

4 **Conversion**

5 **Against All Defendants**

6 53. Plaintiff repeats and realleges the foregoing paragraphs.

7 54. Plaintiff brings this claim on behalf of the class against all Defendants.
8 Defendant has converted the use of Plaintiff's and Class members' ASIC Devices.

9 55. Defendant should be required to disgorge all monies, profits and against
10 which it has obtained from the conversion and reimburse Plaintiff and other Class
11 members for the operating expenses of their ASIC devices during the time in which
12 Defendant received benefits from Class members.

13
14 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

15 A. Determining that this action is a proper class action;

16 B. For an order declaring that the Defendant's conduct violates the statutes
17 and common law claims referenced herein;

18 C. Awarding restitution, compensatory damages and/or disgorgement in
19 favor of Plaintiff, members of the Class, and the California Class against Defendant
20 for all harm suffered as a result of Defendant's wrongdoing, in an amount to be
21 proven at trial, including interest thereon;

22 D. Awarding injunctive relief against Defendant to prevent Defendant
23 from continuing their ongoing unfair, unconscionable, and/or deceptive acts and
24 practices;

25 E. For an order of restitution and/or disgorgement and all other forms of
26 equitable monetary relief;

27 F. Awarding Plaintiff and members the Class their reasonable costs and
28 expenses incurred in this action, including counsel fees and expert fees; and

G. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable in this action.

Dated: November 19, 2018

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